

0000098491

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission

DOCKETED

2009 MAY 29 A 9:10

MAY 29 2009

DOCKETED BY

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

IN THE MATTER OF THE APPLICATION OF
NEUPATH NETWORKS, LLC, FOR APPROVAL
OF A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE TRANSPORT AND
BACKHAUL TELECOMMUNICATIONS
SERVICES.

DOCKET NO. T-20567A-07-0662

PROCEDURAL ORDER**BY THE COMMISSION:**

On November 26, 2007, NewPath Networks, LLC ("NewPath" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("CC&N") to provide transport and backhaul telecommunications services to wireless carriers in Arizona.

On August 7, 2008, the Commission's Utilities Division ("Staff") filed a Letter of Insufficiency and first set of data requests in this matter.

On August 15, 2008, NewPath filed responses to Staff's Data Requests.

On October 31, 2008, the Commission's Utilities Division ("Staff") filed a Staff Report recommending approval of NewPath's application, subject to certain conditions.

On November 7, 2008, a Procedural Order was issued setting the hearing in the matter for March 25, 2009, and other procedural deadlines were established.

On November 10, 2008, NewPath, through Arizona counsel, filed a Motion and Consent of Local Counsel for *Pro Hac Vice* of Jamie T. Hall, requesting that Mr. Hall be admitted *pro hac vice* in this matter.

On November 13, 2008, a Procedural Order was issued granting Mr. Jamie T. Hall admission *pro hac vice*.

On November 19, 2008, NewPath filed a Request for an Expedited Hearing Date ("Request").

1 On December 4, 2008, Staff filed a Response to NewPath's Request, stating Staff did not
2 object to an expedited hearing.

3 On December 8, 2008, by Procedural Order, NewPath's Request was granted and the date of
4 the hearing was reset to February 18, 2009.

5 On January 30, 2009, NewPath docketed an Affidavit of Publication showing notice of
6 application and hearing date had been published on January 15, 2009, in the *Arizona Republic*, a
7 newspaper of general circulation in the proposed service area.

8 On February 18, 2009, a hearing was held as scheduled before a duly authorized
9 Administrative Law Judge of the Commission. NewPath and Staff appeared through counsel and
10 presented testimony. During the hearing, several members of the public appeared to give public
11 comments and raised concerns that the hearing date had been expedited and stated they desired to file
12 for intervention in this matter.

13 On February 27, 2009, public comments were filed on behalf of the DC Ranch Association.

14 On March 3, 2009, a Procedural Order was issued directing that the record would remain open
15 until March 9, 2009, for additional public comments. The Procedural Order also stated that NewPath
16 could file responses to the public comments on or before March 13, 2009.

17 Between March 3, 2009 and March 13, 2009, additional public comments were docketed
18 regarding NewPath's application. Further, on March 13, 2009, NewPath filed a response to the
19 public comments.

20 On March 18, 2009, by Procedural Order, a second day of hearing in this matter was
21 scheduled for April 27, 2009, and other procedural deadlines were established.

22 On April 10, 2009, the Town of Carefree, the Town of Paradise Valley and the City of
23 Scottsdale filed Motions to Intervene ("Motions") in this matter.

24 On April 17, 2009, by Procedural Order, the Town of Carefree, the Town of Paradise Valley,
25 and the City of Scottsdale were granted intervention.

26 On April 20, 2009, NewPath filed objections to the requests for intervention made by the City
27
28

1 of Scottsdale, Town of Carefree, and Town of Paradise Valley.¹

2 On April 24, 2009, the City of Scottsdale docketed a Hearing Memorandum.

3 On April 27, 2009, the hearing reconvened. NewPath, Staff, and the intervenors appeared
4 through counsel. Public comment was taken. Counsel for Staff requested that the hearing be
5 continued to afford Staff and Newpath an opportunity to respond to the City of Scottsdale's
6 Memorandum, which had been received by the ALJ, Staff, the Company, and the intervenors on the
7 morning of the hearing. Staff's request to continue the hearing was granted and the matter was
8 recessed.

9 On May 1, 2009, NextG Networks of California, Inc. d/b/a Next G Networks West ("NextG")
10 filed an Application to Intervene in this proceeding.

11 On May 4, 2009, by Procedural Order, NewPath, Staff, the Town of Carefree, and the Town
12 of Paradise Valley were directed to file written briefs addressing the jurisdictional issues raised by the
13 City of Scottsdale and other relevant arguments pertaining to this matter no later than May 29, 2009.

14 On May 22, 2009, at the request of the City of Scottsdale a telephonic procedural conference
15 was conducted by the ALJ with the parties. The Town of Carefree, Town of Paradise Valley, City of
16 Scottsdale, NewPath, and Staff appeared through counsel for the conference. The City of Scottsdale
17 requested that the briefing schedule be reset to some time in the future because the City of Scottsdale
18 anticipated possible settlement of the issues with NewPath. The other parties agreed to continue the
19 briefing schedule.

20 Accordingly, an amended briefing schedule should be set and the hearing date should be reset
21 in this matter.

22 IT IS THEREFORE ORDERED that the **hearing is this matter shall reconvene on July 7,**
23 **2009, at 10:00 a.m.,** or as soon as practicable, at the Commission's offices, Hearing Room 100,
24 1200 West Washington, Phoenix, Arizona 85007.

25 IT IS FURTHER ORDERED that the parties shall file **written briefs**, no later than **June 12,**
26 **2009**, addressing the jurisdictional issues raised by the City of Scottsdale and any other relevant

27
28 ¹ Pursuant to the Procedural Order issued on March 18, 2009, objections to Motions for Intervention were to be filed no
later than April 20, 2009. NewPath filed timely objections to the Motions for Intervention on April 20, 2009.

1 arguments pertaining to this matter.

2 IT IS FURTHER ORDERED that **responsive briefs** may be filed by any party **no later than**
3 **June 26, 2009.**

4 IT IS FURTHER ORDERED that **the parties shall file a response to Next G's Application**
5 **for Intervention, on or by June 12, 2009.**

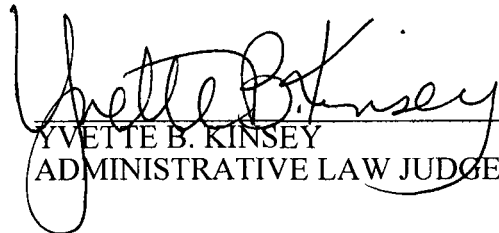
6 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
7 Communications) continues to apply to this proceeding.

8 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
9 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and admission *pro*
10 *hac vice*.

11 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
12 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
13 Rules of the Arizona Supreme Court). Representation before the Commission includes the obligation
14 to appear at all hearings and procedural conferences, as well as all Open Meetings for which the
15 matter is scheduled for discussion, unless counsel has previously been granted permission to
16 withdraw by the Administrative Law Judge or the Commission.

17 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
18 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

19 Dated this 29th day of May, 2009.

20
21
22
23
24
25
26
27
28

YVETTE B. KINSEY
ADMINISTRATIVE LAW JUDGE

24 Copies of the foregoing mailed/delivered
25 this 29th day of May, 2009 to:

26 Jamie T. Hall, Esq.
27 Martha Hudak, Esq.
28 CHANNEL LAW GROUP, LLP
100 Oceangate, Suite 1400
Long Beach, California 90802
Attorney *Pro Hac Vice* for NewPath Networks, LLC

1 J. Gregory Lake
LAKE & COBB, PLC
2 1095 W. Rio Salado Pkwy., Ste. 206
Tempe, Arizona 85281
3 Attorney for NewPath Networks, LLC

4 Deborah Robberson, City Attorney
Eric C. Anderson, Assistant City Attorney
CITY OF SCOTTSDALE
5 3939 N. Drinkwater Boulevard
Scottsdale, AZ 85251
6 Attorneys for City of Scottsdale

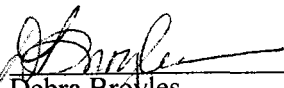
7 Thomas K. Chenal
SHERMAN & HOWARD L.L.C.
8 7047 East Greenway Parkway, Suite 155
Scottsdale, AZ 85254-8110
9 Attorney for Town of Carefree

10 Andrew M. Miller, Town Attorney
TOWN OF PARADISE VALLEY
6402 East Lincoln Drive
11 Paradise Valley, AZ 85253
Attorney for Town of Paradise Valley
12
13 Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
Phoenix, AZ 85007

15 Ernest G. Johnson, Director
Utilities Division
16 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
17 Phoenix, AZ 85007

18 ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
19 Phoenix, AZ 85004-1481

20 By:


21 Debra Broyles
Secretary to Yvette B. Kinsey
22
23
24
25
26
27
28